

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

HOMEDIRECT, INC. d/b/a HOMEDIRECT  
USA,

Plaintiff,

v.

JON WHITLEY,

Defendants.

FILED: APRIL 29, 2008  
08CV2453 NF

Civil Action No. \_\_\_\_\_  
JUDGE HOLDERMAN  
MAGISTRATE JUDGE MASON

**COMPLAINT AND JURY DEMAND**

For its Complaint against Defendant JON WHITLEY (hereafter "Defendant"), Plaintiff  
HOMEDIRECT, INC. ("HomeDirectUSA") alleges as follows:

**NATURE OF ACTION**

1. This is an action for willful federal service mark and trade name infringement in violation of the Lanham Act, 15 U.S.C. §§ 1114(1); violation of the Anti-Cybersquatting Consumer Protection Act of 1999, 15 U.S.C. § 1125(d); and violation of the Illinois Uniform Deceptive Trade Practices Act.

2. This action results from Defendant's unauthorized use in commerce of the HOMEDIRECTUSA service mark and trade name in the homedirectusa.org domain name and website.

**THE PARTIES**

3. HomeDirect, Inc. d/b/a HomeDirectUSA is a transportation company specializing in the home delivery of consumer products, with a principal place of business in Hillside, Illinois.

4. Upon information and belief, Defendant is an individual residing at 4812 Bass Road, Anaheim, California.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over HomeDirectUSA's federal claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a). This Court has jurisdiction over HomeDirectUSA's related state law claim under 28 U.S.C. §§ 1338(b) and 1367.

6. This Court has jurisdiction over Defendant on the grounds that Defendant has engaged in and continues to engage in infringing activities within this State and this District through the promotion of his interactive website soliciting consumers in Illinois familiar with HomeDirectUSA. Defendant's actions produce substantial effects in and directly implicate this forum.

7. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391 because Defendant is subject to personal jurisdiction in this District, and thus resides in this District, or in the alternative, because a substantial part of the events giving rise to the claims herein occurred in this District.

### **FACTS**

8. HomeDirectUSA is a leader in supply chain management for delivery of consumer products.

9. Since long prior to the acts of Defendant complained of herein, and since at least early as 2003, HomeDirectUSA has offered its transportation services in interstate commerce under the HOMEDIRECTUSA service mark and trade name.

10. HomeDirectUSA has expended substantial time, effort, and money extensively advertising, promoting, and marketing the HOMEDIRECTUSA service mark and trade name in commerce and gained nationwide recognition and acclaim.

11. The HOMEDIRECTUSA service mark and trade name identifies and distinguishes the services offered by HomeDirectUSA from the transportation services offered by other companies, and indicates the source of the services.

12. HomeDirectUSA owns two federal registrations on the Principal Register of the United States Patent and Trademark Office covering the HOMEDIRECTUSA service mark and trade name, namely U.S. Reg. Nos. 2,584,285 and 3,039,509. **Exhibit A.** These registrations are valid, subsisting, and in full force and effect.

13. HomeDirectUSA extensively promotes and advertises its services under HOMEDIRECTUSA mark via the Internet, under the domain name www.homedirectusa.com. A copy of the HomeDirectUSA homepage located at www.homedirectusa.com is attached as **Exhibit B.**

#### **DEFENDANT'S ACTS OF INFRINGEMENT AND UNFAIR COMPETITION**

14. Upon information and belief, Defendant is or is affiliated with a competitor of HomeDirectUSA in the transportation services industry.

15. HomeDirectUSA has not authorized, licensed, or otherwise permitted Defendant to use the HOMEDIRECTUSA service mark or trade name, or any other confusingly similar variation thereof.

16. Without permission from HomeDirectUSA and with knowledge of HomeDirectUSA's rights in and to the HOMEDIRECTUSA service mark and trade name, on March 26, 2008, Defendant acquired the homedirectusa.org domain name. A copy of the WHOIS database print out for the homedirectusa.org domain name is attached as **Exhibit C.**

17. Upon information and belief, Defendant has used, advertised, and promoted the homedirectusa.org website in order to divert traffic away from HomeDirectUSA's

[www.homedirectusa.com](http://www.homedirectusa.com) website and disparage HomeDirectUSA's services for commercial gain or with the intent to tarnish or disparage the HOMEDIRECTUSA service mark and trade name, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site. A Google search for HOMEDIRECT USA, attached as **Exhibit D**, lists Defendant's website as the third site in the list. A copy of Defendant's [homedirectusa.org](http://homedirectusa.org) website is attached as **Exhibit E**.

18. At the time Defendant engaged in the unlawful acts complained of herein, Defendant had actual and constructive notice under 15 U.S.C. § 1072 of the HOMEDIRECTUSA service mark and trade name and the valuable reputation and good will associated therewith.

19. Upon information and belief, Defendant is advertising the [www.homedirectusa.org](http://www.homedirectusa.org) website with the intent to deceive consumers and unfairly compete with HomeDirectUSA.

### **COUNT I**

#### **FEDERAL SERVICE MARK INFRINGEMENT**

20. As its first ground for relief, HomeDirectUSA hereby alleges federal trademark and service mark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1). HomeDirectUSA repeats and realleges the allegations of Paragraphs 1 through 19 as though fully set forth herein.

21. Defendant's unauthorized use, advertising, and promotion of the [www.homedirectusa.org](http://www.homedirectusa.org) domain name and website is likely to cause initial interest confusion, mistake, or deception as to source, origin, association, or sponsorship. The relevant public is likely to initially believe that the Defendant's [www.homedirectusa.org](http://www.homedirectusa.org) originates with, is sponsored by, connected with, or associated with, HomeDirectUSA.

22. Defendant's unauthorized and infringing acts, as alleged herein, constitutes intentional and willful infringement of HomeDirectUSA's rights in the HOMEDIRECTUSA service mark and trade name.

23. Defendant's unauthorized and infringing acts have occurred in interstate commerce and have caused, and unless restrained by this Court will continue to cause, serious and irreparable harm to HomeDirectUSA, for which HomeDirectUSA has no adequate remedy at law.

## **COUNT II**

### **CYBERSQUATTING**

24. As its second ground for relief, HomeDirectUSA hereby alleges violations of the Anti-Cybersquatting Consumer Protection Act of 1999, 15 U.S.C. § 1125(d). HomeDirectUSA repeats and realleges the allegations of paragraphs 1 through 23, as though fully set forth herein.

25. The acts of Defendant in acquiring and using the domain name homedirectusa.org in connection with the [www.homedirectusa.org](http://www.homedirectusa.org) website was done in bad faith with the intent to profit from the goodwill of HomeDirectUSA's service mark and trade name in violation of 15 U.S.C. § 1125(d).

## **COUNT III**

### **ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT**

26. As its third ground for relief, HomeDirectUSA hereby alleges violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 *et seq.* HomeDirectUSA repeats and realleges each of the allegations of Paragraphs 1 through 25, as though fully set forth herein.

27. Defendant's aforesaid activities constitute deceptive trade practices in the course of Defendants' business in willful violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1, *et seq.*

**WHEREFORE**, HomeDirectUSA prays that this Court enter the following judgment and order:

1. That Defendant has violated the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(d) and the Illinois Uniform Deceptive Trade Practices Act;
2. That Defendant and all those in active concert or participation with Defendant, be preliminarily and permanently enjoined and restrained from:
  - A. Using, advertising, or promoting the homedirectusa.org domain name and website, or any other domain name or website that gives rise to a likelihood of confusion, mistake or deception of the HOMEDIRECTUSA service mark and trade name;
  - B. Doing any other act or thing likely to injure HomeDirectUSA's business reputation and the goodwill associated with the HOMEDIRECTUSA service mark and trade name; and
  - D. Unfairly competing with HomeDirectUSA in any manner whatsoever.
3. That Defendant be directed to assign to HomeDirectUSA the homedirectusa.org domain name or that the Court order the forfeiture or cancellation of the homedirectusa.org domain name and transfer the domain name to HomeDirectUSA;
5. That Defendant be ordered to pay statutory damages in the amount of \$100,000.
6. That Defendant be ordered to compensate HomeDirectUSA in an amount that would enable it to conduct corrective advertising reasonably calculated to remedy any consumer confusion or damage caused by Defendant's unlawful acts complained of herein;
7. That, pursuant to 15 U.S.C. § 1116, Defendants be directed to file with the Court and serve on HomeDirectUSA within thirty (30) days after issuance of an injunction, a report in

writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

8. That, because of the exceptional nature of this case resulting from Defendant's deliberate and willful actions, this Court award to HomeDirectUSA all reasonable attorneys' fees, costs and disbursements incurred by it as a result of this action, pursuant to 15 U.S.C. § 1117; and

9. That HomeDirectUSA have such other and further relief as this Court may deem just.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, HomeDirectUSA hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

HOMEDIRECT, INC. d/b/a HOMDIRECT  
USA,

Dated: April 29, 2008

By:

/s/ Bryan P. Sugar  
Roger Stein (Reg. No. 6188812)  
Bryan P. Sugar (Reg. No. 6276016)  
SCHWARTZ COOPER CHARTERED  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
TEL: 312.346.1300  
FAX: 312.782.8416  
EMAIL: rstein@schwartzcooper.com  
bsugar@schwartzcooper.com



08CV 2453 NF  
JUDGE HOLDERMAN  
MAGISTRATE JUDGE MASON

# EXHIBIT A



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<b>Word Mark</b>	<b>HOMEDIRECTUSA</b>
<b>Goods and Services</b>	IC 039. US 100 105. G & S: Transportation and delivery of goods to the home by means of air truck, rail and boat. FIRST USE: 19990900. FIRST USE IN COMMERCE: 19990900
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	24.15.03 - Arrows formed by words, letters, numbers or punctuation
<b>Serial Number</b>	75796565
<b>Filing Date</b>	September 10, 1999
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	July 31, 2001
<b>Registration Number</b>	2584285
<b>Registration Date</b>	June 25, 2002
<b>Owner</b>	(REGISTRANT) BEKINS COMPANY, THE CORPORATION CALIFORNIA 330 South Mannheim Road Hillside ILLINOIS 601621852  (LAST LISTED OWNER) HOMEDIRECT, INC. CORPORATION DELAWARE 2555 TELEGRAPH ROAD BLOOMFIELD HILLS MICHIGAN 483021954
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of</b>	

**Record** M. John Carson  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HOMEDIRECTUSA" APART FROM THE MARK AS SHOWN  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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<b>Word Mark</b>	<b>HOMEDIRECT USA</b>
<b>Goods and Services</b>	IC 039. US 100 105. G & S: transportation and delivery of goods to the home by means of air, truck, rail and boat. FIRST USE: 20031215. FIRST USE IN COMMERCE: 20031215
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	07.01.03 - Row houses; Townhouse 07.01.06 - Other houses 24.15.10 - Arrows, more than one; More than one arrow 24.15.25 - Other arrows 26.11.21 - Rectangles that are completely or partially shaded
<b>Serial Number</b>	76618650
<b>Filing Date</b>	November 1, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	October 18, 2005
<b>Registration Number</b>	3039509
<b>Registration Date</b>	January 10, 2006
<b>Owner</b>	(REGISTRANT) The Bekins Company CORPORATION DELAWARE 300 South Mannheim Road Hillside ILLINOIS 601621852

(LAST LISTED OWNER) HOMEDIRECT, INC. CORPORATION FLORIDA 330 SOUTH  
MANNHEIM ROAD HOMEDIRECT, INC. HILLSIDE ILLINOIS 60162

**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Jennifer R. Quinn  
**Prior Registrations** 2584285  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HOME DIRECT" and "USA"  
APART FROM THE MARK AS SHOWN  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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# **EXHIBIT B**



homedirectUSA  
workdesk

user name

password

Log In

homedirectUSA Leaving great last impressions.

HomeDirectUSA is the highest-volume, fastest-growing delivery company in North America, transporting large consumer products to any home or business in the United States and Canada. We provide full supply-chain solutions for manufacturers, retailers, e-tailers, distributors and cataloguers—from impeccable delivery, unpacking, assembly and installation to inventory management and warehousing. Whether it be furniture, home fitness equipment, consumer electronics or home improvement products—any larger item that requires specialized handling—HomeDirectUSA is the right choice. Our commitment to quality is evidenced by our ISO 9001:2000 registration, received September 29th, 1998 and re-granted every year since, so you know you can trust the quality of our work every step of the way.

HomeDirectUSA's unique combination of high touch service and high tech automation and systems provides an array of exceptional and comprehensive benefits to your business, saving you time and money. We'll take care of it all, while presenting a customer experience that upholds and enhances your brand and provides the consumer of your products with an outstanding encounter—leaving a great last impression.

#### High Touch Service

We're staffed by trained, professional two-man delivery teams

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#### Track your

Search by Reference #  
(must enter information)

Search by Waybill

Search by Phone N

# EXHIBIT C



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## WHOIS Search Results

Available **homedirectusa** extensions:

<b>.us</b>	<b>.mobi</b>	<b>.info</b>	<b>.biz</b>	<b>.tv</b>	<b>.eu</b>	<b>.bz</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Order Selected Domain(s) &gt;&gt;

### Your WHOIS Search Results



#### **homedirectusa.org**

Services from Network Solutions:

Certified Offer Service - Let us help you get this domain name!

Backorder - Try to get this name when it becomes available.

SSL Certificates - Get peace of mind with a secure certificate.

Enhanced Business Listing - Promote your business to millions of viewers for only \$1 a month!

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Registry Operator or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify existing registrations. All rights reserved. Public Interest Registry reserves the right to modify these terms at any time. By submitting this query, you agree to abide by this policy.

Domain ID:D152151778-LROR  
Domain Name:HOMEDIRECTUSA.ORG  
Created On:26-Mar-2008 23:30:27 UTC  
Last Updated On:26-Mar-2008 23:30:30 UTC  
Expiration Date:26-Mar-2009 23:30:27 UTC  
Sponsoring Registrar:Wild West Domains, Inc. (R120-LROR)  
Status:CLIENT DELETE PROHIBITED  
Status:CLIENT RENEW PROHIBITED  
Status:CLIENT TRANSFER PROHIBITED  
Status:CLIENT UPDATE PROHIBITED  
Status:TRANSFER PROHIBITED  
Registrant ID:GODA-045446967  
Registrant Name:Jon Whitley  
Registrant Street1:4812 Bass Road  
Registrant Street2:  
Registrant Street3:  
Registrant City:Anaheim  
Registrant State/Province:California  
Registrant Postal Code:92801  
Registrant Country:US  
Registrant Phone:+1.3104828169  
Registrant Phone Ext.:  
Registrant FAX:  
Registrant FAX Ext.:  
Registrant Email:jonwhitley@gmail.com  
Admin ID:GODA-245446967  
Admin Name:Jon Whitley  
Admin Street1:4812 Bass Road  
Admin Street2:  
Admin Street3:  
Admin City:Anaheim  
Admin State/Province:California  
Admin Postal Code:92801  
Admin Country:US  
Admin Phone:+1.3104828169  
Admin Phone Ext.:  
Admin FAX:  
Admin FAX Ext.:  
Admin Email:jonwhitley@gmail.com  
Tech ID:GODA-145446967  
Tech Name:Jon Whitley  
Tech Street1:4812 Bass Road  
Tech Street2:  
Tech Street3:  
Tech City:Anaheim

Tech State/Province: California  
 Tech Postal Code: 92801  
 Tech Country: US  
 Tech Phone: +1.3104828169  
 Tech Phone Ext.:  
 Tech FAX:  
 Tech FAX Ext.:  
 Tech Email: jonwhitley@gmail.com  
 Name Server: NS1.WORDPRESS.COM  
 Name Server: NS2.WORDPRESS.COM  
 Name Server:  
 Name Server:  
 Name Server:  
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e.c

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The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

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**IP Address:** 66.135.48.251 (ARIN & RIPE IP search)  
**IP Location:** US(UNITED STATES)-CALIFORNIA-LOS ANGELES  
**DMOZ** no listings  
**Y! Directory:** see listings  
**Data as of:** 14-Jun-2005



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PPC Advertising  
SEO Services

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Private Domain Registration  
Email Security

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Promotions & Free Offers  
Earn Airline Offers

**COMPANY INFORMATION**

Reseller Programs  
Affiliates  
SEO Training  
Resources and Learning Cent  
Small Business Blog  
About Us  
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288 results stored on your computer - Hide - About



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Trademark Electronic Sear.. - Word Mark **HOMEDIRECT USA** Goods ar

### HomeDirectUSA

**HomeDirectUSA** is a leading supply chain services and management company that specializes in logistics, warehousing, distribution and fulfillment with white ...  
www.homedirectusa.com/ - 22k - Cached - Similar pages - Note this

#### HomeDirectUSA | Bringing it Home

Expecting a delivery from **HomeDirectUSA**? Let us tell you where it is and when it's scheduled to arrive. Our state-of-the-art tracking system is continually ...  
homedirectusa.com/track.html - 11k - Cached - Similar pages - Note this

#### Tales From Home Direct USA - 3 visits - Apr 28

Tales From **Home Direct USA**. Stories About **Home Direct** - Black Glove Service with a Bad Attitude. Hello world! March 26, 2008 by homedirectusa ...  
homedirectusa.org/ - 9k - Cached - Similar pages - Note this

#### HomeDirect USA adds order fulfillment system | Order Fulfillment ...

Chicago— **HomeDirectUSA**, a four-year-old national home delivery service of the Bekins Co., is expanding. It is adding a proprietary communications and order ...  
www.allbusiness.com/company-activities-management/operations-supply/6346309-1.html - 56k - Cached - Similar pages - Note this

#### Home Direct USA Employer Info on CareerBuilder

Read the **Home Direct USA** employment profile on CareerBuilder. Search **Home Direct USA** jobs and apply online.

Map of 650 Perry Rd, Plainfield, IN 46168  
www.careerbuilder.com/Jobs/Company/C8C8C170XRJV8K01C6V/Home-Direct-USA/ - 33k - Cached - Similar pages - Note this

#### Home Direct USA Jobs on CareerBuilder.com

Looking for **Home Direct USA** Jobs? See currently available job openings on CareerBuilder.com. Browse the current listings and fill out job applications.  
www.careerbuilder.com/JobSeeker/Jobs/JobResults.aspx?ncc=%5E%22Home+Direct+USA%22%24 - 102k - Cached - Similar pages - Note this  
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#### Homedirect USA Leaves Salesforce.com And Moves To Salesnet ...

**HomeDirect USA** is a division of the Bekins Company, a premier provider of ... In addition, because **HomeDirect USA** is an ISO 9002 certified company, ...  
www.rightnow.com/news/article.php?id=6833 - 19k - Cached - Similar pages - Note this

#### Warehouse Supervisor job in Plainfield, IN - Home Direct USA ...

**Home Direct USA** - Plainfield, IN. **HomeDirectUSA** is a leading supply chain ... Who do I Know™ at **Home Direct USA** - by LinkedIn; Warehouse Supervisor Salaries ...  
www.simplyhired.com/job-id/bt2pghjbe5/warehouse-supervisor-jobs/ - 39k -

Cached - Similar pages - Note this

**Operations Manager job in Plainfield, IN - Home Direct USA ...**

**HomeDirect USA** a leading supply chain management company that specializes in the home ... health benefits, 401(k) and more.**HomeDirect USA** 650 Perry, ...  
www.simplyhired.com/job-id/lxoyvde2cp/operations-manager-jobs/ - 41k -

Cached - Similar pages - Note this

**Senior Commercial Credit Analyst - Home Direct USA - Hillside, IL ...**

Senior Commercial Credit Analyst - --Description-- HomeDirectUSA is a leading supply chain management company that specializes in the home delivery of large ...

www.indeed.com/viewjob?jk=47e28d1aef87ef6b - 20k - Cached - Similar pages - Note this

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homedirect USA

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# EXHIBIT E



# Tales From Home Direct USA

Stories About Home Direct - Black Glove Service with a Bad Attitude

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## **Hello world!**

March 26, 2008 by homedirectusa

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